

Focus

The Environmental Agenda '94: Where Do Industry and Environmentalists Stand?

In the year since President Bill Clinton made his first Earth Day address, important environmental issues such as trade, rangeland reform, and endangered species have been brought to the floor of Congress. While some bills have become legislation, others remain on the docket; in fact, many of the top environmental initiatives put forth by the Clinton administration await action in the second year of the 103rd Congress. Given the multitude of competing interests and agendas both inside and outside the nation's capital, the Clinton administration has been busy preparing a well-formulated game plan to make sure the bills will move through Congress to passage without crippling amendments. "It's an extremely important year for the environment," says Debbie Sease, legislative director of the Sierra Club. "There is going to be a lot of debate, a lot of activity in Congress. Industry, lawmakers, and the environmental community are going to be in the trenches battling over the language and the content of the bills."

Ronald Lang, president of the American Industrial Health Council, says that on key environmental issues coming up before Congress—the reauthorization of Superfund and the Clean Water Act, the elevation of the EPA to cabinet status, and reform of the 1872 Mining Law, to name a few—little agreement exists among concerned groups. Lang says that, as a consequence, "Congress knows something should be done, but the indications are it doesn't quite know what to do." Many of the prominent groups in industry and the environmental community have been vocal about what environmental issues they think will be important in 1994, how they plan to advocate their positions, and how they think the administration and congress will respond. Industry and the environmental community will be watching and lobbying for major environmental issues as several important legislative measures move through Congress.

Superfund

Superfund reauthorization is at the top of almost everyone's agenda. Signed into law by President Jimmy Carter in December 1980, the Superfund gives EPA the authority and money to clean up, or compel others to clean up, hazardous waste sites. Reauthorized in 1980 and extended again in 1991, Congress must vote on Superfund, which is scheduled to expire October 1.

In the first 12 years of Superfund's existence, the federal government spent \$7.7 billion, and the private sector spent roughly \$6.3 billion on the program. By September of 1993, construction work related to clean up has been completed at 217 of the 1289 sites on the National Priorities List. As of January of 1994, 56 sites have been completely cleaned up.

There is widespread agreement at the White House and among industry and environmental organizations that Superfund is not working and needs to be fixed.

But as William Frick, vice president and general counsel for health, environment and safety of the American Petroleum Institute, explains "Even though everybody agrees Superfund is not working, a lot of disagreement exists on how to make it work. Congress is going to debate Superfund a lot before it's reauthorized."

On February 3, the Clinton administration put forth its plan for renewing the Superfund law, calling for major revisions. Cutting back on spending, developing national standards to determine how clean is clean, speeding up the cleanup process, and getting communities to play a greater role in cleanup decisions are among the plan's major revisions. The Clinton plan came about after extensive debate both inside and outside of government and reflects the views of two groups that were formed to reach a consensus on Superfund reform: the National Advisory Council on Environmental Policy, which EPA Ad-

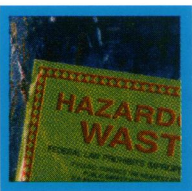
ministrator Carol Browner convened, and the National Commission on Superfund, headed by Johnathan Cash, president of the World Resources Institute, an environmental think tank.

In March, the Clinton administration was drafting Superfund legislation and planning to send it to Congress. Superfund will be the focus of intense lobbying by industry, insurance groups, local government, and the environmental community, sources predict. The environmental community looks favorably on the Clinton proposal. "We are basically happy with the administration's position on Superfund," explains Sharon Newsome, vice president for resources conservation for the National Wildlife Federation. Melinda Taylor, director and senior attorney for the North Carolina Division of the Environmental Defense Fund, says that, although her organization is encouraged by the overall structure of the program the administration is proposing, it's going to lobby congress to ensure that "specific language is added to make clear that environmental protection is paramount."

Meanwhile, the Sierra Club believes the Clinton initiative is still fuzzy on the role that the public will play in the cleanup of Superfund sites. "The Clinton administration is proposing that different degrees of cleaning up a site be considered, depending on what its next use is going to be," Sease explains. "The big question is who decides what the next use is going to be. What forum is going to decide that? So we want to ensure that any Superfund legislation provides for more community involvement."

Critics say that throughout Superfund's history, more money has been spent on administrative and legal costs than on cleanup. Clinton's initiative seeks to limit the liability of low-level polluters, provides incentives for polluters to agree to mediation rather than litigation, and calls for new taxes on insurance companies to encourage them to settle old claims against them by policy holders.

Spokespersons for the chemical and petroleum industries say they are for changes in cleanup standards and for spending more Superfund money on cleanup than on litigation, but they want to ensure that any changes in liability don't lead

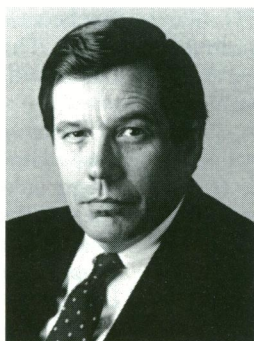


American Industrial Health Council

Ronald Lang—Risk assessment is science and science is difficult to legislate.

to increased burdens on their industries. "Superfund is a priority for us," says Frick. "We want the new program to find a way to broaden the tax base for the fund without increasing our share. We're paying 60 percent of the fund, but we are responsible for only 10 percent of the liability, based on our best estimates."

Despite the high priority that many groups give Superfund reauthorization, none seem certain it will happen this year. "Hearings on Superfund are starting, but I don't see much progress," says David L. Thomas, staff attorney for environmental policy issues at the American Chemical Society. Newsome adds, "It's going to be a tough battle, but I think Superfund reauthorization has a good chance of happening."



American Petroleum Institute

William Frick—Superfund is a priority for industry.

ing legislation drafted last year by Senator Max Baucus (D-Montana) and the committee's ranking republican, Senator John Chafee of Rhode Island. The administration plan was formulated in consultation with the Baucus-Chafee committee, so it's substantially similar to the congressmen's plan. The House bill sponsored by congressman Gerry Studds (D-Massachusetts), however, differs significantly from the Senate version.

Various industry and environmental organizations are focusing on a different part of the CWA. Industry spokespersons seem particularly concerned about further regulations on industrial discharges. "We have given an awful lot of attention to point sources [of pollution]," said Thomas J. Gilroy, associate director of Media Communication for the Chemical Manufacturers Association. "We don't think any further legislation restricting [industrial] point source discharge of toxic pollutants is warranted at this time. Let's give more attention to other sources of water pollution."

One of the biggest battles in Congress will surely take place over the chlorine issue. A house bill (HR 2898) introduced by Congressmen Bill Richardson (D-New Mexico) and Henry Waxman (D-California) would amend the CWA to ban all discharges of organochlorines formed as the result of chlorine-based bleaching in the pulp and paper manufacturing process. The bill directs pulp and paper mills, which are required to have permits, to enforce zero discharge of organochlorine pollutants within five years. The bill would also require EPA to issue permits on the basis of progress of conversion from chlorine to chlorine-free technologies and assist mills in the use of alternative clean production processes.

"We maintain that virtually all uses of chlorine have severe health and environmental health effects," says Jack Weinberg, a spokesperson for Greenpeace's Chlorine Campaign. Spokespersons for the chlorine industry and the pulp and paper industry strongly object to Greenpeace's chlorine campaign and what they consider to be the organization's sweeping pronouncements about the ill effects of chlorine. "We find the Greenpeace chlorine campaign outrageous in its scope and purpose," explains Leo Anziano, the chairman of the Chlorine Chemistry Council. "We believe it's based on pure emotion and not on sci-

ence. Without any real study, it's been determined that all organochlorines are harmful," he says.

Anziano says that the Chlorine Chemistry Council opposed the Richardson-Waxman bill, describing it as "going beyond common sense and science." He adds that CCC has spent much time talking to Richardson, Waxman, and their staffs, explaining to them that the bill goes "far beyond what is necessary and appropriate."

The Clinton administration's proposal on the CWA includes a provision that indicates the administration will develop a national strategy for "substituting, reducing or prohibiting chlorine and chlorinated compounds." Clinton's "greenpaper" calls for the development of a plan of action within the next 30 months. The provision encourages environmentalists.

"Clinton seems to be identifying the chlorine issue as an emerging issue of national policy," says Weinberg. "That's a positive development."

The American Forest and Paper Association (AFPA), formerly the American Paper Institute, believes the goal of any government-sponsored chlorine study should be the clarification of the scientific issues. "We have said many times that any effort to limit the use of specific substances should be balanced and based on sound science, should consider environmental and economic impacts, and should assure that all interested parties participate and achieve consensus on the result," explains Josephine Cooper, vice president for environment and regulatory affairs at AFPA. "We are confident we can work with the

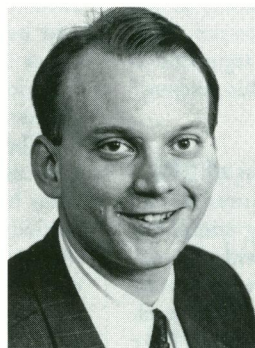
EPA and other interested parties on such a review." In a letter to Congressman Richardson dated February 8, AFPA contended that since EPA is going forth with the study, his proposed legislation would be premature.

Wetlands are protected by the Clean Water Act. Wetlands practices and legislation have been controversial issues on Capitol Hill since the mid-1970s, and this year nothing is



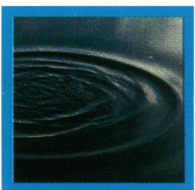
Greenpeace

Jack Weinberg—All uses of chlorine have environmental health effects.



NRDC

Erik Olson—The Clean Water Act is the NRDC's number one priority.



Clean Water Act

First enacted in 1972, the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is the principal federal law designed to prevent pollution of the country's rivers, lakes, and coastal waters. There is a consensus that the act has greatly improved water quality, but the evidence shows that, two decades after its enactment, water remains under assault from pollution and contamination.

In February 1994, the Clinton administration and Senate Democrats put forth an ambitious program to revise the CWA, broadening it to include runoff from farms and other previously unregulated pollution, such as discharges of certain types of toxic chemicals, and announcing the goal of putting into law the preservation of wetlands at their current total acreage. "The Clean Water Act is our number one priority," says Erik Olson, staff attorney for the Natural Resources Defense Council. "The Clinton administration's proposals include many improvements, although we are not endorsing everything in it. But we think it's a good start."

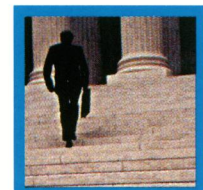
The NRDC is a member of the Clean Water Network, one of the largest environmental coalitions in U.S. history. The network includes 100 groups from across the country, including the United States Public Interest Research Group, the National Audubon Society, the Sierra Club, and the United Steel Workers of America.

Along with the administration's plan, a Senate subcommittee has begun consider-

expected to change. Several of Clinton's proposals will be hotly debated. They include plans to delegate authority to state and local governments to run the nation's wetlands program, a responsibility that under the Clean Water Act currently rests with the federal government. Environmentalists say localities often lack funds and scientific expertise to manage these resources. Environmentalists also worry about the Clinton proposal to allow private landowners, but not environmental activists, to appeal the federal government's determinations as to what are wetlands. Senators Baucus and Chafee introduced legislation last July (S 1304) that would give local and state governments increased authority over granting construction permits. Congressmen Studds and E. (Kika) de la Garza (D-Texas) have introduced similar legislation in the House.

The Clinton administration likes both bills, but Peter Kelley, a spokesperson for the League of Conservation Voters, the bipartisan political wing of the environmental movement, expresses the concern of environmental groups that the bills give too much power to the states. "We worry that the states might be given immunity from wetlands protection," Kelley explains. "So we are working hard to ensure the administration doesn't weaken on its pledge of no net loss of wetlands." Sources are not sure when votes will be taken on the two bills, but they expect dogfights in both the House and Senate.

Environmental groups worry about the growing power in Congress of the "takings movement," which, under the banner of private property rights, is being pushed by powerful business advocacy groups and challenging numerous environmental regulations on the grounds that they create unconstitutional government takings of private property. If laws restrict the use of wetlands, for example, supporters of the takings movement want the owner to be paid. "We expect the takings argument to be heard a lot in Congress this session," Taylor predicts.



Elevation of EPA

Environmentalists have long complained that with no representation at the federal cabinet level, their concerns have

been denied equal footing with such issues as defense, commerce, and education. But last May, by a vote of 79 to 15, the Senate



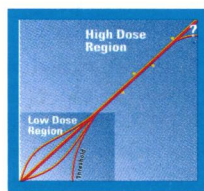
Thomas Gilroy—Further restrictions on industrial point source discharges are unwarranted.

Chemical Manufacturer's Association

passed a bill (S 171) that would give the EPA cabinet status as the new Department of Environmental Protection.

In early February 1994, the EPA cabinet bill was voted down on the House floor, mainly because a damaging amendment proposed by Senator Bennett Johnson (D-Louisiana), was attached to it that would mandate cost-benefit analysis of all federal environmental regulations. "The argument for risk assessment seems so reasonable that the legislators don't understand

why they shouldn't vote for it," Newsome explains. "But we are going to try to resurrect the bill after we do some thinking about what went wrong and how we can correct it. The environmental coalition that has worked hard for the bill's passage is licking its wounds but is regrouping." Taylor adds, "It can still happen this year; we have enough time."



Risk Assessment

Risk assessment touches on many environmental agenda items up before Congress this year, such as the elevation of EPA and pesticide reform. Several bills dealing with the reform of risk assessment, moreover, are being drafted or are in the works. "The federal government and Congress have increasingly recognized the importance of risk assessment," Frick explains, "so debate on the issue is starting to take place in Congress and in the press." Lang adds, "Congress fully recognizes that we should do risk assessment better, and we can." Senator Daniel Patrick Moynihan (D-New York) introduced a piece of legislation titled The Environmental Risk Reduction Act of 1993 (S 110), which should be strongly debated. Its aim is to provide Congress with quantitative estimates of the risks, costs, and benefits of EPA programs by requiring the identification and ranking of the greatest environmental risks.

The debate over the validity of risk assessment has been heated, often pitting environmentalists against industry and the scientific community. A big reason for that, says Lang, is the nature of the issue. "When we talk about risk assessment, we are talking about science, and science is very difficult to legis-

late because it's complicated and changing so fast. That's why I don't think any legislation will be enacted in Congress this year."

Many environmentalists say the problem is not science but scientific misinformation. "Some industry spokespersons have figured out that if they produce some statistics and label them science, they can diffuse any fear people have about dangers such as being exposed to toxics," explains Taylor.

In characterizing the American Chemical Society's agenda with regard to risk assessment, Thomas appears to agree with many environmentalists on at least one issue. "Rather than using a single number or percentage in assessing risk, we are looking to see if the EPA will consider using a range that reflects the degree of uncertainty surrounding the risk assessment process."



Endangered Species Act

The Endangered Species Act (ESA) reauthorization will be hotly debated in Congress, prompting what is expected to be a major clash between environmentalists on one hand and timber, ranching, and mining interests on the other. In the first year of the 103rd Congress, Congressman Studds and Senators Baucus and Chafee introduced bills that environmentalists say protect endangered and threatened species. Looming as serious challenges to the initiatives, however, are amendments that will seriously weaken both bills. "The amendments being considered will cripple and bankrupt the program that has turned the tide against the impending extinction of many species," says Kelley.

As is the case with wetlands legislation, the most serious challenge to a strong reauthorization of the ESA comes from takings legislation. "You tell someone that you can't cut down that tree because an eagle is in it, and they will say that's a taking," Olson explains. Last October, supporters of the ESA got an inkling of things to come when their opponents used the takings debate on the National Biological Survey to attack the act. "Unless the issue of takings is addressed, ESA reauthorization remains uncertain," Newsome concedes.

National Wildlife Federation



Sharon Newsome—Reauthorization of the Endangered Species Act remains uncertain.

Environmental groups don't expect the ESA to come up for reauthorization this Congress, but they say they are still working hard on the issue.

"To say Congress is not going to reauthorize the ESA this year is not the same thing as saying that the act is not a priority for us," Sease explains. "We are focusing on trying to build the support necessary to ensure that the ESA has some teeth in it, if it's reauthorized."

Environmental groups are using the media to launch a public education campaign, while they lobby on Capital Hill and talk to editorial boards of newspapers and to grassroots organizations about the importance of ESA reauthorization.



Pesticide Reform

Environmental groups maintain that despite increasing public understanding of the potential dangers of pesticides, public health

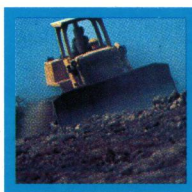
is still in danger from pesticides in the air, and in ground- and drinking water. They are working in cooperation with labor, farm workers, and public health and consumer organizations to develop a legislative platform that would promote and develop alternatives to hazardous pesticides.

Environmentalists support companion House and Senate bills introduced by Congressman Waxman and Senator Ted Kennedy as vehicles for food safety reform. The bills amend the Federal Food, Drug and Cosmetic Act to better control pesticide residues in food; however, the coalition is pushing for three amendments to the bills, which would provide for standards protecting children, the labeling of foods containing dangerous carcinogens, and the protection of the public from noncancer health effects. To further its objectives, the coalition is also working to reform the Federal Insecticide, Fungicide and Rodenticide Act. "Both of these acts will be the subject of a lot of controversy and legislative action this year," predicts Olson.

Expressing a sentiment largely shared by industry, Thomas says that his organization looks at food safety from a risk assessment viewpoint. In a letter to Congressman Waxman in January, the American Chemical Society said that "while some substances may pose a risk (however low) at any concentration, banning a product that presents minimal risks may be inadvisable." In the letter, the American Chemical Society also urged Congress to allow EPA to establish standards on a case-by-case evaluation.

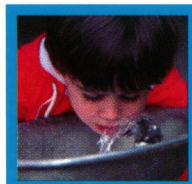


Debbie Sease—Environmentalists are pushing for comprehensive reform of the 1872 Mining Law.



government land to be sold for as little as \$2.50 an acre for mining purposes, and costs taxpayers millions of dollars in lost revenues. Opposition to reform has come from legislators from the western states, but this year it appears as if Congress is prepared to thoroughly overhaul the federal mining law. The House will consider legislation for the first time that will impose comprehensive operating and reclamation standards for mines on U.S. lands and requires mining companies to post bonds large enough to cover the full cost of reclamation. The mining industry worries about the possibility of being hit with an open-ended reclamation fee to repair damage caused by mines that in many cases have been defunct for decades. "Both the House and Senate have passed [mining] reform bills," Sease explains. "We are trying to make sure that the recommendation coming out of the joint House-Senate conference committee is closer to what we feel is the more comprehensive House bill than to the Senate version, and to ensure that there is strong support in the Senate to adopt the conference report, if it's a good one."

But Olson adds, "The recent firing of the Head of the Bureau of Land Management is not a good sign that the Clinton administration is going to get tough on mining and grazing. The Mining Law doesn't make sense. It's antiquated; people are making fortunes off taxpayer resources while they destroy the land. We want to see movement from the administration."



Safe Drinking Water Act

Many environmental groups are working both to strengthen the act's enforcement and to make improvements in it. They are pleased, they say, that the Clinton administration proposal and the Baucus Senate bill (S 1547), don't weaken the two-decade-old drinking water standard-setting provision in section 1412 of the act. But as Olson explains, "While we support many of the provisions of the Baucus bill, we are bothered by some parts of it. So we are working with Baucus's

committee to improve the bill and strengthen the Drinking Water Act."

These issues are not the only ones Congress is expected to review, debate, and possibly vote on. There is also funding for comprehensive population legislation, rangeland reform, the Clinton administration's forest plan, stricter controls on radon and environmental tobacco smoke, and a host of other issues. Environmental and industry organizations say they will continue to play an active role as watchdogs of Clinton administration initiatives and proposed congressional legislation.

Ron Chepesiuk

Ron Chepesiuk is a freelance journalist in Rock Hill, South Carolina.

Sierra Club